

REMARKS

At the outset, applicants thank Examiner Kubelik for her time in discussing the application with the undersigned in advance of this amendment.

Claims 29 and 37-43 are pending in the present application. Claims 29 and 37-39 have been amended to address the formal matters raised in the outstanding Official Action. Claims 40-43 correspond to the claims as identified as being allowable by the Examiner in the proposed Examiner's amendment. Indeed, applicants thank the Examiner for the indication of allowable subject matter.

In the outstanding Official Action, claims 29 and 37-39 were rejected under 35 USC 112, first paragraph, for allegedly not satisfying the enablement requirement. This rejection is respectfully traversed.

As to claims 29 and 37-39, applicants note that the nucleic acid conferring male sterility and transgene are combined together with a transcriptional control system.

Thus, applicants submit that the present amendment obviates this rejection.

Applicants also note that claim 29 has also been amended to delete the recitation wherein the compound is recovered by extraction and administered to a human or animal. These steps were introduced into claim 29 in response to the Official action dated February 24, 2004.

It was previously recited that the transgene encoded "a therapeutic or prophylactic compound of human or animal origin". Accordingly, the recitation of "recovering the compound by extraction wherein said compound is administered to the human or animal" was added to specify that the compound encoded by the transgene was intended for therapeutic or prophylactic use in the human or animal.

This amendment was made in view of d'Halluin which disclosed a construct with a kanamycine resistance gene, which was regarded by the Patent Office as a therapeutic or prophylactic compound. However, the term "a therapeutic or prophylactic compound of human or animal origin" has been replaced by "dog gastric lipase or collagen".

Thus, the recitation of "recovering the compound by extraction and wherein said compound is administered to a human or animal", which had been introduced specifically in connection with the term "and recovering the compound by extraction and wherein said compound is administered to a human or animal", is no longer necessary. As a result, applicants believe that claims 29 and 37-39 are still allowable in the absence of this recitation.

Claims 29 and 37-39 were rejected under 35 USC §112, second paragraph, for allegedly being indefinite. Applicants believe the present amendment obviates this rejection.

Claim 29 and 39 were rejected for lacking antecedent basis for the phrases "the dog gastric lipase or collagen" and

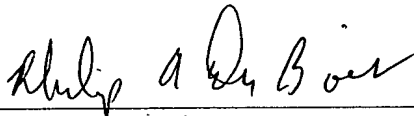
"the promoter", respectively. However, applicants believe that these claims have been amended to address the antecedent basis for these phrases.

In view of the present amendment and the foregoing remarks, therefore, applicants believe that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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